IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.4053 OF 2002

Rajesh Asalraj Jain Plaintiff

versus

M/s.Tirupati Industries & others Defendants

Ms.Neeta Solanki i/by Kiran Jain for plaintiff
None for defendants

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th June 2005

PC :

1. The plaintiff has filed the suit for recovery of principal sum Rs.73,250/- along with interest @ 24% p.a. from 22nd May 2001 to 30th June 2002.

2. The claim according to the plaintiff arises out of a written contract as evidenced by the invoices and delivery challans under which certain goods were supplied, sold and delivered. The receipt of goods has been duly acknowledged. The invoices' copies were also received. There has been no dispute raised insofar as the quality or quantity thereof. On the other hand, the

balance due at the foot of an account in respect of invoices in question has duly been confirmed by signing a balance confirmation letter (page 25). All this, according to the learned counsel appearing for the plaintiff, gives right to the plaintiff to invoke summary procedure under Order XXXVII of CPC, 1908 and suit is accordingly maintainable.

3. She states that insofar as defendant no.4 is concerned, the claim is settled and suit is withdrawn. Ms.Solanki prays for a decree against defendant nos.1, 2 and 3. She invites my attention to the bailiff’s report annexed to the affidavit proving service which categorically states that defendant no.2 accepted service of the packet containing writ of summons on behalf of first defendant firm and himself. Insofar as third defendant is concerned, an adult member in the family has accepted the packet delivered by the bailiff. The adult member refused to append signature although the packet was duly handed over. According to Ms.Solanki, this complies with the requirements stipulated by law insofar as service of writ of summons is concerned. The affidavit proving service together with bailiff’s report is taken on record and marked "X" for

identification.

4. As far as merits of the matter are concerned, after due service of the writ of summons, there are neither any steps taken to move this Court by the defendants nor there is any dispute raised to the claim. Once this summary procedure is invoked by the plaintiff, it is incumbent upon defendants to take steps as are stipulated by law. Even otherwise, there is no defence to the claim inasmuch as the entire amount is confirmed and liability is admitted. Even the rate of interest is clearly provided in the original invoices which I have perused with the assistance of Ms.Solanki. The original documents along with list taken on record and marked "X-1" for identification.

5. Decree as prayed. Computation of advocates' costs as well as refund of court fee as per rules. Drawing up of decree is expedited. However, further interest i.e. from the date of suit till payment and realisation shall be @ 12% p.a..

(S.C.DHARMADHIKARI, J.)